

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Richardson	Team: Squad #8	CCRB Case #: 201709095	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/01/2017 4:30 PM	Location of Incident: Rite Aid (723-725 Manhattan Avenue); 94th Precinct Stationhouse	Precinct: 94	18 Mo. SOL 5/1/2019	EO SOL 5/1/2019	
Date/Time CV Reported Wed, 11/01/2017 10:39 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 11/01/2017 10:39 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tenzing Legdhen	03297	936936	094 PCT
2. POM Zbigniew Duchnowski	09002	941685	094 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Andrea Haro	05898	951806	094 PCT
2. SGT Jorge Caraballo	04444	926410	094 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Zbigniew Duchnowski	Force: Police Officer Zbigniew Duchnowski used physical force against § 87(2)(b)	
B.POM Tenzing Legdhen	Force: Police Officer Tenzing Legdhen used physical force against § 87(2)(b)	

Case Summary

On November 1, 2017, § 87(2)(b) filed this complaint with the CCRB via its online website.

On November 1, 2017, at approximately 4:40 pm, PO Andrea Haro, Sgt. Jorge Caraballo, PO Tenzing Legdhen and PO Zbigniew Duchnowski, all of the 94th Precinct, responded to a larceny in progress at 723-725 Manhattan Avenue, a Rite Aid location, in Brooklyn. PO Legdhen and PO Duchnowski approached § 87(2)(b) and PO Duchnowski allegedly threw § 87(2)(b) to the floor (**Allegation A: Force**, § 87(2)(g)). During the handcuffing process, PO Legdhen allegedly punched § 87(2)(b) several times in the head area (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) was then successfully handcuffed and subsequently transported to the 94th Precinct stationhouse.

There is no video evidence.

Findings and Recommendations

Allegation A: Force: Police Officer Zbigniew Duchnowski used physical force against § 87(2)(b)

Allegation B: Force: Police Officer Tenzing Legdhen used physical force against § 87(2)(b)

It is undisputed that PO Duchnowski and PO Legdhen responded to a larceny job inside of 723-725 Manhattan Avenue, in Brooklyn. It is also undisputed that these officers were involved in § 87(2)(b)'s handcuffing process. Furthermore, it is undisputed that these officers made physical contact with § 87(2)(b) during this process. § 87(2)(g)

On November 1, 2017, at approximately 4:30pm, § 87(2)(b) was inside of 788 Manhattan Avenue, a Rite Aid location, in Brooklyn. He was inside this location for a few minutes, and did not recall if he purchased or shoplifted any items from this location, but added that he did have his own personal satchel on his person. § 87(2)(b) exited this location and walked approximately a block to 723-725 Manhattan Avenue, another Rite Aid location, in Brooklyn. § 87(2)(b) also could not recall if he purchased anything in this store or what he was shopping for. After a couple minutes, § 87(2)(b) walked towards the front entrance, when he felt someone grab his right arm from behind. § 87(2)(b) turned around with a confused face and observed a male officer, identified via the investigation as PO Legdhen. § 87(2)(b) did not recall if he pulled his arm away but then immediately felt an officer, identified via the investigation as PO Duchnowski, forcefully throw him to the floor. § 87(2)(b) was not able to further articulate how he was thrown to the floor or describe the force but stated it happened very fast and that his chest made contact with the floor first causing his head to bounce up off the floor. § 87(2)(b) did not recall which area of his head hit the floor but stated he lost consciousness as a result of this action. § 87(2)(b) stated that when he regained consciousness he observed PO Legdhen punch him on the right side of his face with a closed fist. PO Legdhen then punched § 87(2)(b) in the back of his head approximately two to three times. § 87(2)(b) stated these punches resulted in pain and red marks to the right side of his face and red marks to the back of his neck. § 87(2)(b)

stated he lost consciousness again, and that when he regained it, he was handcuffed and then stood up onto his own feet. (Board Review 01)

On § 87(2)(b), § 87(2)(b) visited the § 87(2)(b), in Manhattan. § 87(2)(b) informed the staff at this facility that he was pushed to the ground by strangers and was repeatedly struck in the head causing him to lose consciousness. § 87(2)(b) also informed the staff that the police eventually came to the scene because the strangers thought he stole something. § 87(2)(b) reported that it was ‘ultimately a case of mistaken identity’, and he immediately went home. § 87(2)(b) informed the staff that because of this incident he suffered from nausea, vomiting, constant headache, intermittent dizziness, and fatigue. § 87(2)(b) also reported for the most part that he was amnesic to the events that took place during this incident. The records revealed that § 87(2)(b) had Concussion syndrome. (See Medical Records).

On December 5, 2017, § 87(2)(b) emailed the undersigned seven photographs of his injuries as a result of this incident. § 87(2)(b) stated he took these photographs on November 2, 2017 on his cell phone. These photographs revealed: bruising to § 87(2)(b)’s right side of face and behind his left ear, red marks to the back of his neck and left side of neck, and also black and blue under his right arm. (Board Review 08-14)

PO Duchnowski testified that on November 1, 2017, they received a radio run for a larceny in progress at 788 Manhattan Avenue, Brooklyn, with the following physical description of the perpetrator: white male, with a detailed clothing description that PO Duchnowski did not recall. Also indicated on this radio run, was that the perpetrator left the location and the complainant, identified via the investigation as Lloyd Mason a security guard at the Rite Aid, was following him. Approximately a minute later, PO Duchnowski received another radio run indicating that the perpetrator of the larceny was inside of a Rite Aid at 723-725 Manhattan Avenue. Shortly thereafter, once at the aforementioned location, PO Duchnowski and his partner, PO Legdhen, walked inside the location towards the back aisles. PO Duchnowski and PO Legdhen walked up and down these aisles of the location together, and approximately after one minute they observed a white male fitting the description, identified via the investigation as § 87(2)(b) standing by himself in one of the aisles. PO Duchnowski then observed § 87(2)(b) walk swiftly towards the entrance of the location. PO Haro and Sgt. Caraballo, were on scene at this point, however PO Duchnowski did not recall when they arrived on scene. Sgt. Caraballo looked at PO Duchnowski and PO Legdhen, pointed towards § 87(2)(b) and stated in a low voice, “That’s him.” PO Legdhen approached § 87(2)(b) from behind, grabbed § 87(2)(b)’s wrist, and stated, “Police”, with his shield out. PO Duchnowski observed § 87(2)(b) turn around to face PO Legdhen, and then forcefully rip his arm away as to escape the wrist grab. § 87(2)(b) then used his hands to shove PO Legdhen, and then tried to run towards the entrance. PO Legdhen then grabbed § 87(2)(b) by the wrist again to prevent him from fleeing. PO Duchnowski then approached § 87(2)(b) while saying, “Police, police.” PO Duchnowski grabbed § 87(2)(b)’s wrist and § 87(2)(b) again tried to rip his arm away from the grasp. PO Duchnowski then stated, “Police, Police, stop resisting”, but § 87(2)(b) did not comply. PO Duchnowski bear hugged § 87(2)(b) in that PO Duchnowski used his arms to wrap around § 87(2)(b)’s upper body and then used his weight to bring § 87(2)(b) down to the floor by leaning on him. PO Duchnowski stated he took § 87(2)(b) to the floor because of § 87(2)(b)’s resistance, the swinging of his arms

were out of control, § 87(2)(b)'s attempts to flee and because PO Duchnowski felt that § 87(2)(b) being on the floor would give them the best chance to safely handcuff him. PO Duchnowski also added he was in fear for his safety, and at that point he had already told § 87(2)(b) to stop resisting several times. PO Duchnowski stated he did not throw § 87(2)(b) to the floor. PO Duchnowski stated they did not fall to the floor but instead PO Duchnowski controlled § 87(2)(b)'s body while bringing him to the floor. PO Duchnowski stated he also went to the floor with § 87(2)(b) and landed on his knees. PO Duchnowski did not recall how § 87(2)(b) landed on the floor but stated he knew § 87(2)(b) was face down at some point due to the officers having to rear handcuff him. PO Duchnowski stated § 87(2)(b) never complained about his head hitting the floor or about any pain to his head. PO Duchnowski never observed § 87(2)(b) lose consciousness during this incident. § 87(2)(b) still resisted while on the floor, in that, he flailed his arms refusing to be handcuffed. However seconds later, officers were able to grab his arms and successfully handcuff § 87(2)(b). PO Duchnowski did not see who handcuffed § 87(2)(b) as he was positioned towards the upper body of § 87(2)(b). PO Duchnowski stated he did not observe PO Legdhen punch § 87(2)(b) or § 87(2)(b) complain of being punched. PO Duchnowski lifted § 87(2)(b) up onto his own feet and asked § 87(2)(b) if he was okay and § 87(2)(b) responded, "Yes." PO Duchnowski did not observe any injuries to § 87(2)(b). § 87(2)(b) was then walked out of the Rite Aid location and into a police vehicle. (Board Review 02)

PO Legdhen's testimony was consistent with his partner's, PO Duchnowski, in regards to these allegation with the following exceptions: PO Legdhen stated the officers and § 87(2)(b) fell to the floor as a result of the struggle between § 87(2)(b) attempting to pull his arms away from the officers and the officers trying to put § 87(2)(b)'s arms behind his back. PO Legdhen only observed PO Duchnowski grab § 87(2)(b)'s arm during this struggle. PO Legdhen did not observe PO Duchnowski throw § 87(2)(b) to the floor during this struggle. PO Legdhen did not recall if § 87(2)(b) fell face first or back first, or which body part of § 87(2)(b)'s body made contact with the floor first. PO Legdhen did not hear § 87(2)(b) complain of any pain or injuries to his head and did not observe § 87(2)(b) lose consciousness at any point. While on the floor, PO Legdhen stated the only action he took was grabbing § 87(2)(b)'s arms and attempting to put them behind his back. PO Legdhen did not recall if § 87(2)(b) still physically resisted while on the floor. PO Legdhen also did not recall which officer placed § 87(2)(b) in handcuffs or how long they were on the floor before § 87(2)(b) was handcuffed. PO Legdhen did not punch § 87(2)(b) at any point during this incident and did not hear § 87(2)(b) complain about being punched or hear § 87(2)(b) complain of any injuries or pain. (Board Review 03)

PO Haro testified that the physical description indicated in the radio run of the larceny was: white male, with brown leather duffle bag. PO Haro arrived at 723-725 Manhattan Avenue, and observed § 87(2)(b) who fit the physical description, standing by the front registers with a brown bag on his person. PO Haro approached with Sgt. Caraballo, PO Duchnowski and PO Legdhen and they all stated, "Police", with their shields out. § 87(2)(b) did not respond but instead tried to run to the entrance of the location. PO Haro, PO Legdhen and PO Duchnowski reached out and grabbed § 87(2)(b)'s arms. § 87(2)(b) attempted to pull his arms away from the officers' grasps. PO Haro stated § 87(2)(b) then fell to the floor, as a result of the struggle between § 87(2)(b) pulling his arms and trying to run and the officers trying to pull his arms in the other direction to handcuff him. PO Haro did not make physical contact with § 87(2)(b) as

he fell to the floor, but added that PO Legdhen and PO Duchnowski were. PO Haro stated no officer threw § 87(2)(b) to the floor and added that no officer fell to the floor with § 87(2)(b). PO Haro was unable to articulate which part of § 87(2)(b)'s body made contact with the floor first, and was not able to say if he fell face first or back first. PO Haro did not see § 87(2)(b)'s head hit the floor, nor did she hear § 87(2)(b) complain of any injuries or pain to his head. PO Haro never observed § 87(2)(b) lose consciousness during this incident. PO Haro stated § 87(2)(b) still physically resisted on the floor by locking his arms and refusing to put his arms behind his back, but either PO Legdhen or PO Duchnowski were able to handcuff him. PO Haro did not observe PO Legdhen punch § 87(2)(b) and did not observe any injuries to § 87(2)(b). PO Haro did not hear § 87(2)(b) complain of any injuries or pain. (Board Review 04)

Sgt. Caraballo testified that after approximately 30 seconds of canvassing the 723-725 Manhattan Avenue, while standing in the back aisles, he observed § 87(2)(b) who fit the physical description, walking towards the front entrance. Sgt. Caraballo looked at PO Duchnowski and PO Legdhen and stated, "I think that's him", while pointing towards § 87(2)(b). Sgt. Caraballo's view as PO Legdhen and PO Duchnowski approached § 87(2)(b) at the front of the location was obstructed by the physical aisle's structure and the items in the aisle. When Sgt. Caraballo was able to exit the aisle and approached the front of the location he observed § 87(2)(b) already face first on the floor. Sgt. Caraballo did not observe how § 87(2)(b) ended up on the floor and was never informed by any officer how § 87(2)(b) ended up on the floor. Sgt. Caraballo did not hear § 87(2)(b) complain of being thrown to the floor, nor of any injuries or pain. Sgt. Caraballo never observed § 87(2)(b) lose consciousness during this incident. Sgt. Caraballo stated he observed either PO Legdhen or PO Duchnowski handcuff § 87(2)(b) and then lift him up to his feet. Sgt. Caraballo did not observe PO Legdhen punch § 87(2)(b) and did not observe any injuries to § 87(2)(b). (Board Review 05)

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. *NYPD Patrol Guide Procedure 221-01* (Board Review 17)

§ 87(2)(g)
A document request submitted to the 94th Precinct for § 87(2)(b)'s NYPD arrest photograph provided negative results, so the investigation was not able to determine if § 87(2)(b) had any injuries to his face area while in police custody immediately after this incident. § 87(2)(b)'s arrest entry in the 94th Precinct stationhouse's Command log and arrest report (§ 87(2)(b)) both list § 87(2)(b)'s physical condition as apparently normal. § 87(2)(b)'s arrest report does not note any force being used to affect his arrest. (Board Review 06, 07)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 15)
- PO Zbigniew has been a member of service for eleven years and has been the subject in two CCRB complaint and 2 allegations, none of which were substantiated. § 87(2)(g)
- PO Tenzing Legdhen has been a member of service for 13 years and this is the first CCRB complaint to which he has been a subject.

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Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming bruising, a concussion and emotional suffering and seeking a monetary amount the Court determines to be just and proper. There is no 50H hearing scheduled.
- § 87(2)(b), § 87(2)(c)

Squad: 08

Investigator: _____
Signature Print Date

Squad Leader: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature Print Date